

(2020) 09 PAT CK 0113

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 12528 Of 2009

Mukul Kumar Singh

APPELLANT

Vs

Commissioner, Income Tax, At
Bela Kothi And Ors

RESPONDENT

Date of Decision: Sept. 7, 2020

Acts Referred:

- Income Tax Act, 1961 - Section 142A, 143(3), 147, 147B, 264

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Nand Kishore Singh, Archana Sinha

Final Decision: Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

â€œ(i) To issue a writ of mandamus or any other appropriate writ/order direction for (a) quashing the order passed by respondent no.1 u/s 264 of the

I.T. Act dated 12-06-2009, (Annexure 6) (b) for quashing the assessment order passed by respondent no.2 u/s 143(3) 147 dt. 8-12-2008 (Annexure 4)

as without jurisdiction, void and double assessment and (c) for quashing the valuation report prepared by respondent no.3 as being without any basis

and arbitrary and violative of natural justice. (Annexure 2)

(ii) To declare the assessment order made under section 143 on 20-12-2006 to be effective and valid operative assessment order in case of the

petitioner (Annexure 3)

(iii) To grant any other relief for which this Court deem fit and proper under the facts of the case.â€

The trust deficit between the Department and the Assessee, perhaps has led to the litigation being prolonged for more than a decade and a half. Every public body and Institution has a duty not only to build goodwill and defend its reputation but also to instill faith in the mind of public with regard to its functionality. There are times when the Institution has to show magnanimity, even in the existence of a bonafide error, and not unnecessarily embroil a party to litigation and prolong his agony.

We are concerned with the correctness of the order dated 8th of December, 2008 passed by the DCIT, Circle-2, Muzaffarpur in the proceedings initiated under Section 143(3)/147 of the Income Tax Act, 1961 (Annexure-4), as affirmed in an appeal by the Commissioner of Income Tax vide its order dated 12th of June, 2009 (Annexure- 6). In terms of these orders, action of the Revenue in reassessing the income of the Assessee solely based on the report submitted by the Valuation Officer stands justified.

A prelude to the passing of the aforesaid order, briefly stated, is as under:

With respect to the Financial Year 2003-04 (Assessment Year 2004-05), the Assessee filed his return declaring his income from the salary as a Development Officer in LIC India. In the said Assessment Year, the Assessee got constructed a residential building on the plot/land owned by his wife. Along with his return he placed on record Valuation Report dated 10th of January, 2005 indicating the value of the residential house (double storey) to be Rs. 24,41,515/-.

Undisputedly, on 05.01.2006 the Assessing Officer, in exercise of its power under Section 142 (A) of the Income Tax Act called for the report of the Valuation Officer (Valuation Unit), Department of Income Tax. The said report though dated 19th of October, 2006, reached the officer dealing with the file only on 5th of November, 2007. As per this report, the valuation of the built up structure is Rs. 30,31,549/-.

Hence, prior thereto, the income assessed by the Assessee, on the subject matter, was accepted to be true and correct for when the petitioner's case was selected for scrutiny on the basis of CASS (Computer Assisted Scrutiny), the Assessing Officer never raised any objection to the Valuation Report submitted by the Assessee, as is evident from order dated 20th of December, 2006 passed under Section 143(3) of the Act (Annexure-3).

Subsequently, and only on the basis of the Valuation Report submitted by the official valuer received on 5th of November, 2007, notice dated

15.01.2008 under Section 147 was issued to the Assessee, calling upon him to show cause as to why valuation of the property be not accepted in

terms thereof. Not finding favour with the explanation furnished by the Assessee, the authorities passed the impugned orders.

Instant petition was filed on 15th of September, 2009 and is pending consideration before this Court.

Opposing the petition Mrs. Archana Sinha, invites our attention to the decision rendered by the Apex Court in the case of ESS ESS KAY Engineering

Co. P. Ltd. Vs. Commissioner of Income Tax, reported in ITR 2001 Vol. 247, page- 818 and Bawa Abhai Singh Vs. Deputy Commissioner of Income

Tax, reported in ITR 2002 Vol. 253 page- 83.

She has also tried to distinguish the following decisions referred to by Shri Nand Kishore Singh, learned counsel for the petitioner in support of the

case of the Assessee: (1). Assistant Commissioner of Income-Tax Vs. Dhariya Construction Co., ITR 2010 Vol. 328 page 515; and (2) Commissioner

of Income Tax (in both) Vs. M/s Mithila Prop. Pub. & Contract (in both), 2008 (4) PLJR 785.

We find the petitioner's case to be squarely covered by the decisions referred to and relied upon by his counsel. We need not dilate on the ambit

and scope of Section 147(b) of the Act. But briefly stated, what is required to be examined is as to whether (a) the Assessee was truthful in disclosing

the particulars of income to be assessed; (b) There was material before the Assessing Officer to reopen the proceedings, on which, there is

application of mind or not.

The order passed in Dhariya Construction Co. (supra), in toto, is reproduced as under:

“Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the

District Valuation Officer (DVO). The opinion of the DVO per se is not an information for the purposes of reopening assessment under section 147

of the Income-tax Act, 1961. The Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon. In the

circumstances, there is no merit in the civil appeal. The Department was not entitled to reopen the assessment.

Civil appeal is, accordingly, dismissed. No order as to costs.â€

The coordinate Bench of this Court in the case of M/s Mithila Prop. Pub. & Contract (supra) has also held to the aforesaid effect.

We are in agreement with the view taken by the Coordinate Bench, for in the attending facts and circumstances there is nothing on record to establish

that save and except for the Valuation Report, alone, there is any other material even prima facie, indicating application of mind by the Assessing

Officer in arriving at its conclusion, necessitating reopening of assessment carried out under CASS.

The difference in valuation of the property in the two reports is also not substantial. However, we may not be misunderstood of our judgment to be

clouded by such fact. The Assessee is a salaried person. He had constructed a residential house on a plot owner by his wife. During the course of

proceedings, in fact much prior to the passing of the order accepting his return, he had submitted the Valuation Report from an approved Valuer. The

same was never objected to or rejected. Right from day one, he had disclosed full particulars, what took the official valuer more than ten months to

value the property and why despite the Assessee having submitted his Valuation Report dated 10th of January, 2005 request for calling Valuation

Report was made only on 19th of October, 2006 and why the report reached the officer on 5th of November, 2007 are all questions which are not

answerable from the record.

As such, to our mind, without meeting the essential ingredient of the officer having applied his mind to the various material, necessitating reopening of

assessment, is missing in the instant case.

Hence, in the given facts and circumstances, we quash and set aside the impugned order dated 8th of December, 2008 passed by the DCIT, Circle-2,

Muzaffarpur in the proceedings initiated under Section 143(3)/147 of the Income Tax Act, 1961 (Annexure-4), as affirmed in an appeal by the

Commissioner of Income Tax vide its order dated 12th of June, 2009 (Annexure- 6).

The writ petition stands disposed of in the aforesaid terms.